

HB

369

I-LS1266H
Bannister
3/27/00

CS FOR HOUSE BILL NO. 369()

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY

Deletes Indexing

Offered:
Referred:

Sponsor(s): REPRESENTATIVE HARRIS

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to property exemptions under the Alaska Exemptions Act,
2 including removal of the provisions for adjusting the dollar amounts by referring
3 to the consumer price index; and providing for an effective date."

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

5 * Section 1. AS 09.38.010(a) is amended to read:

6 (a) An individual is entitled to an exemption as a homestead of the individual's
7 interest in property in this state used as the principal residence of the individual or the
8 dependents of the individual, but the value of the homestead exemption for the
9 individual's interest may not exceed \$250,000 [\$54,000].

Committee amended

10 * Sec. 2. AS 09.38.010(b) is amended to read:

11 *same* (b) If property owned by the entirety or in common is used by one or more
12 individual owners or their dependents as their principal residence, each owner is
13 entitled to a homestead exemption of that owner's interest in the property as provided
14 in (a) of this section. [THE AGGREGATE VALUE OF MULTIPLE HOMESTEAD

1 EXEMPTIONS ALLOWABLE WITH RESPECT TO A SINGLE LIVING UNIT
2 MAY NOT EXCEED \$54,000. IF THERE ARE MULTIPLE OWNERS OF
3 PROPERTY EXEMPT AS A HOMESTEAD, THE VALUE OF THE EXEMPTION
4 OF EACH INDIVIDUAL OWNER MAY NOT EXCEED THE INDIVIDUAL
5 OWNER'S PRO RATA PORTION OF \$54,000.]

6 *Same* * Sec. 3. AS 09.38.010(c) is amended to read:

7 (c) If property that includes a homestead is sold under an execution, the sale
8 becomes effective upon confirmation by order of the court. The court shall enter the
9 order of confirmation unless the sales price under the execution is less than the
10 amount of exemption, or unless, within six months [60 DAYS] after the sale, the
11 individual repurchases the property under this section or the court extends the time for
12 confirmation upon the filing of a timely motion by a party in interest. The individual
13 may repurchase property, including that individual's homestead, at a sale on execution
14 before confirmation by paying into court the costs of the sale plus the lesser of either
15 (1) the difference between the highest bid and the amount of the exemption in the
16 property, or (2) the amount of the creditor's claim. If the individual does not exercise
17 the repurchase right under this subsection, the clerk of the court shall first remit an
18 amount determined to be exempt to the individual from the proceeds of sale and the
19 balance less the cost of the sale to the creditor. For the purpose of collecting an
20 amount remaining unpaid on a judgment after repurchase of property by an individual
21 under this subsection, the creditor or the creditor's assignee may not make another levy
22 *Same* on the property repurchased.

23 * Sec. 4. AS 09.38.015 is amended by adding a new subsection to read:

24 (e) An association of apartment owners under AS 34.07 and a unit owners'
25 association established under AS 34.08 are entitled to an exemption of all money that
26 is kept on deposit in the name of the association in a financial institution authorized
27 to do business in the state and that has been paid to the association as common
28 expenses under AS 34.07 or assessments for common expenses under AS 34.08. The
29 *Same* exemption in this subsection may be waived, but the waiver must be in writing.

30 * Sec. 5. AS 09.38.017(e)(3) is amended to read:

31 (3) "retirement plan" means

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(A) a retirement plan that is qualified under 26 U.S.C. 401(a), 26 U.S.C. 403(a), 26 U.S.C. 403(b), 26 U.S.C. 408, 26 U.S.C. 408A, or 26 U.S.C. 409 (Internal Revenue Code);

(B) a medical savings account under 26 U.S.C. 220; or

New

(C) a deferred compensation plan under 26 U.S.C. 457.

* Sec. 6. AS 09.38.020 is amended to read:

Sec. 09.38.020. Exemptions of personal property subject to value limitations. (a) An individual is entitled to an exemption in property not to exceed an aggregate value of \$3,600 [\$3,000] chosen by the individual from the following categories of property:

(1) household goods and wearing apparel reasonably necessary for one household;

(2) if reasonably held for the personal use of the individual or a dependent, books and musical instruments; and

(3) family portraits and heirlooms of particular sentimental value to the individual.

(b) An individual is entitled to exemption of jewelry, not exceeding \$1,200 [\$1,000] in aggregate value, if held for the personal use of the individual or a dependent.

(c) An individual is entitled to exemption, not exceeding \$3,360 [\$2,800] in aggregate value, of implements, professional books, and tools of the trade.

(d) An individual is entitled to the exemption of pets to the extent of a value not exceeding \$1,200 [\$1,000].

(e) An individual is entitled to an exemption of one motor vehicle to the extent of a value not exceeding \$3,600 [\$3,000] if the full value of the motor vehicle does not exceed \$24,000 [\$20,000].

* Sec. 7. AS 09.38.020 is amended by adding a new subsection to read:

Same as Sec. 6

(f) In addition to the exemptions allowed under AS 09.38.015(a) and the exemption for liquid assets under AS 09.38.030, an individual is entitled to an exemption of cash and other liquid assets up to \$8,075. In this subsection, "liquid assets" includes deposits, securities, notes, drafts, accrued vacation pay, refunds,

1 prepayments, and receivables, but does not include property identified under (a) of this
2 section.

3 * Sec. 8. AS 09.38.025(a) is repealed and reenacted to read:

Same as Sec 7

4 (a) Except as provided in this section or AS 09.38.017, an individual is entitled
5 to an exemption of \$250,000 in the total combined value of the cash surrender value
6 of all life insurance policies and annuity contracts owned by the individual, unless the
7 life insurance policies or annuity contracts were entered into for the benefit of a
8 creditor.

9 * Sec. 9. AS 09.38.025 is amended by adding new subsections to read:

Same as Sec

10 (c) A beneficiary of a life insurance policy or annuity contract is entitled to
11 an unlimited exemption of all proceeds of life insurance policies and annuity contracts
12 that are payable on the death of an insured to the beneficiary, other than those
13 proceeds that are paid to the insured's estate.

14 (d) If the life insurance policies and annuity contracts of an individual have
15 accrued dividends and loan values available to the individual that aggregate more than
16 \$250,000, a creditor of the individual may obtain a court order that requires the
17 individual or the beneficiary of the policy to pay the creditor and that authorizes the
18 creditor on the debtor's behalf to obtain payment of the amount of the accrued
19 dividends and loan values that exceed \$250,000 or the amount of the creditor's claim,
20 *New* whichever amount is less.

21 * Sec. 10. AS 09.38.030(a) is amended to read:

22 (a) Except as provided in (b), (c), (f), and (h) of this section and
23 AS 09.38.050, an individual debtor is entitled to an exemption of the individual
24 debtor's weekly net earnings not to exceed \$420 [\$350]. The weekly net earnings of
25 an individual are determined by subtracting from the weekly gross earnings all sums
26 required by law or court order to be withheld. The weekly net earnings of an
27 individual paid on a monthly basis are determined by subtracting from the monthly
28 gross earnings of the individual all sums required by law or court order to be withheld
29 and dividing the remainder by 4.3. The weekly net earnings of an individual paid on
30 a semi-monthly basis are determined by subtracting from the semi-monthly gross
31 earnings all sums required by law or court order to be withheld and dividing the

1 *New* remainder by 2.17.

2 * **Sec. 11.** AS 09.38.030(b) is amended to read:

3 (b) An individual who does not receive earnings either weekly, semi-monthly,
4 or monthly is entitled to a maximum exemption for the aggregate value of cash and
5 other liquid assets available in any month of \$1,680 [\$1,400], except as provided in
6 (f) and (h) of this section and in AS 09.38.050. **In this subsection.** [THE TERM]
7 "liquid assets" includes deposits, securities, notes, drafts, accrued vacation pay, refunds,
8 prepayments, and receivables, but does not include permanent fund dividends before
9 *New* or after receipt by the individual.

10 * **Sec. 12.** AS 09.38.050(b) is amended to read:

11 (b) The exemption amounts under AS 09.38.030 may be increased when the
12 individual submits an affidavit, under penalty of perjury, stating that the individual's
13 earnings alone support the individual's household; by so doing, the maximum part of
14 the individual's aggregate disposable earnings for any week subject to execution may
15 not exceed the amount by which the individual's disposable earnings for that week
16 exceed \$660 [\$550], or, if the individual is claiming an exemption for cash or other
17 liquid assets under AS 09.38.030(b), a maximum amount of \$2,640 [\$2,200] available
18 in a month is exempt.

19 * **Sec. 13.** AS 09.38.055 is amended to read: *Same as Sec. 9*

20 **Sec. 09.38.055. Bankruptcy proceedings.** In a proceeding under 11 U.S.C.
21 (Bankruptcy) only the exemptions under AS 09.38.010, 09.38.015(a) and (e),
22 09.38.017, 09.38.020, 09.38.025 and 09.38.030 apply.

23 * **Sec. 14.** AS 09.38.060(a) is amended to read: *Same as Sec. 10*

24 (a) If property, or a part of it, that could have been claimed as [AN EXEMPT
25 HOMESTEAD UNDER AS 09.38.010,] a burial plot under AS 09.38.015(a)(1), a
26 health aid under AS 09.38.015(a)(2), or personal property subject to a value limitation
27 under AS 09.38.020(a)(1) [,] or (2) or (c) [09.38.020(c)], has been taken or sold by
28 condemnation, or has been lost, damaged, or destroyed and the owner has been
29 indemnified for it, the individual is entitled to an exemption of proceeds that are
30 traceable for 12 months after the proceeds are received. **If property, or a part of it,**
31 **that could have been claimed as an exempt homestead under AS 09.38.010 has**

1 been voluntarily sold, has been taken or sold by condemnation, or has been
 2 damaged or destroyed and the owner indemnified for the damage or destruction,
 3 the [AN] individual is entitled to an exemption of proceeds of the property, [FROM
 4 THE VOLUNTARY SALE OF AN EXEMPT HOMESTEAD UNDER AS 09.38.010]
 5 that are traceable for 24 [SIX] months after the proceeds are received. The exemption
 6 of proceeds under this subsection does not entitle the individual to claim an aggregate
 7 exemption in excess of the value limitation otherwise allowable under AS 09.38.010
 8 *New* or 09.38.020.

9 * **Sec. 15.** AS 09.38.065(a) is amended to read:

10 (a) Notwithstanding other provisions of this chapter,

11 (1) a creditor may make a levy against exempt property of any kind to
 12 enforce a claim for

13 (A) child support;

14 (B) unpaid earnings of up to one month's compensation or the
 15 full-time equivalent of one month's compensation for personal services of an
 16 employee; or

17 (C) state or local taxes;

18 (2) a creditor may make a levy against exempt property to enforce a
 19 claim for

20 (A) the purchase price of the property or a loan made for the
 21 express purpose of enabling an individual to purchase the property and used for
 22 that purpose;

23 (B) labor or materials furnished to make, repair, improve,
 24 preserve, store, or transport the property; and

25 (C) a special assessment imposed to defray costs of a public
 26 improvement benefiting the property; and

27 (3) a creditor may make a levy against exempt property of any kind to
 28 enforce the claim of a crime victim if the claim arises from criminal conduct of the
 29 debtor that results in a felony conviction, except that the debtor is entitled to an
 30 exemption in property

31 (A) not to exceed an aggregate value of \$3,600 [\$3,000] chosen

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by the debtor from the following categories of property:

(i) household goods and wearing apparel reasonably necessary for one household;

(ii) books and musical instruments, if reasonably held for the personal use of the debtor or a dependent of the debtor; and

(iii) family portraits and heirlooms of particular sentimental value to the debtor; and

(B) not to exceed an aggregate value of \$3,360 [\$2,800] of the debtor's implements, professional books, and tools of the trade.

* Sec. 16. AS 09.38 is amended by adding a new section to read: *SAME AS SEC 13*

Sec. 09.38.130. Treatment of certain trusts. A trust is treated as an individual when applying the provisions of this chapter if the trust is revocable by the person creating the trust or if the income of the trust is taxable to the individual creating the trust under the grantor trust rules of 26 U.S.C. 671 - 678.

* Sec. 17. AS 09.38.030(e)(4) and 09.38.115 are repealed.

* Sec. 18. This Act takes effect immediately under AS 01.10.070(c).

SAME

Indexing provision of Sec. 11/12

A M E N D M E N T

OFFERED IN THE HOUSE

TO: HB 369

1 Page 4, line 24:

2 Delete "index for January of"

3 Insert "annual average of the index for [JANUARY OF]"

4 Page 4, line 26:

5 Delete "index for January of"

6 Insert "annual average of the index for"

7 Page 4, line 31:

8 Delete "index for January of that"

9 Insert "annual average of the index for the year preceding [JANUARY OF] that
10 even-numbered"

11 Page 5, lines 2 through 6:

12 Delete

13 "(1) the portion of the percentage change in the index in excess of a
14 multiple of 10 percent is disregarded and the dollar amounts change only in multiples
15 of 10 percent of the amounts appearing in this chapter on the effective date of this
16 Act for the dollar amounts in AS 09.38.010, 09.38.020(f), and 09.38.025(a) and (d)
17 and on August 26, 1982, for the other dollar amounts in this chapter; and"

18 Insert

19 "(1) the [PORTION OF THE PERCENTAGE CHANGE IN THE
20 INDEX IN EXCESS OF A MULTIPLE OF 10 PERCENT IS DISREGARDED AND
21 THE] dollar amounts change only in multiples of \$100 [10 PERCENT OF THE
22 AMOUNTS APPEARING IN THIS CHAPTER ON AUGUST 26, 1982]; and"

HOUSE BILL NO. 369

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY REPRESENTATIVE HARRIS

Introduced: 2/11/00

Referred: Labor and Commerce, Judiciary

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to property exemptions under the Alaska Exemptions Act; and
2 providing for an effective date."

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 * Section 1. AS 09.38.010(a) is amended to read:

5 (a) An individual is entitled to an exemption as a homestead of the individual's
6 interest in property in this state used as the principal residence of the individual or the
7 dependents of the individual, but the value of the homestead exemption may not
8 exceed \$250,000 [\$54,000].

9 * Sec. 2. AS 09.38.010(b) is amended to read:

10 (b) If property owned by the entirety or in common is used by one or more
11 individual owners or their dependents as their principal residence, each owner is
12 entitled to a homestead exemption of that owner's interest in the property as provided
13 in (a) of this section. [THE AGGREGATE VALUE OF MULTIPLE HOMESTEAD
14 EXEMPTIONS ALLOWABLE WITH RESPECT TO A SINGLE LIVING UNIT

*for the individual's
interest* Amend 1

1 MAY NOT EXCEED \$54,000. IF THERE ARE MULTIPLE OWNERS OF
 2 PROPERTY EXEMPT AS A HOMESTEAD, THE VALUE OF THE EXEMPTION
 3 OF EACH INDIVIDUAL OWNER MAY NOT EXCEED THE INDIVIDUAL
 4 OWNER'S PRO RATA PORTION OF \$54,000.]

5 * Sec. 3. AS 09.38.010(c) is amended to read:

6 (c) If property that includes a homestead is sold under an execution, the sale
 7 becomes effective upon confirmation by order of the court. The court shall enter the
 8 order of confirmation unless the sales price under the execution is less than the
 9 amount of exemption, or unless, within six months [60 DAYS] after the sale, the
 10 individual repurchases the property under this section or the court extends the time for
 11 confirmation upon the filing of a timely motion by a party in interest. The individual
 12 may repurchase property, including that individual's homestead, at a sale on execution
 13 before confirmation by paying into court the costs of the sale plus the lesser of either
 14 (1) the difference between the highest bid and the amount of the exemption in the
 15 property, or (2) the amount of the creditor's claim. If the individual does not exercise
 16 the repurchase right under this subsection, the clerk of the court shall first remit an
 17 amount determined to be exempt to the individual from the proceeds of sale and the
 18 balance less the cost of the sale to the creditor. For the purpose of collecting an
 19 amount remaining unpaid on a judgment after repurchase of property by an individual
 20 under this subsection, the creditor or the creditor's assignee may not make another levy
 21 on the property repurchased.

22 * Sec. 4. AS 09.38.015 is amended by adding a new subsection to read:

23 (e) An association of apartment owners under AS 34.07 and a unit owners'
 24 association established under AS 34.08 are entitled to an exemption of all money that
 25 is kept on deposit in the name of the association in a financial institution authorized
 26 to do business in the state and that has been paid to the association as common
 27 expenses under AS 34.07 or assessments for common expenses under AS 34.08. The
 28 exemption in this subsection may be waived, but the waiver must be in writing.

29 * Sec. 5. AS 09.38.017(e)(3) is amended to read:

30 (3) "retirement plan" means

31 (A) a retirement plan that is qualified under 26 U.S.C. 401(a),

1 26 U.S.C. 403(a), 26 U.S.C. 403(b), 26 U.S.C. 408, 26 U.S.C. 408A, or 26
 2 U.S.C. 409 (Internal Revenue Code);

3 (B) a medical savings account under 26 U.S.C. 220; or

4 (C) a deferred compensation plan under 26 U.S.C. 457.

5 * **Sec. 6.** AS 09.38.020 is amended by adding a new subsection to read:

6 (f) In addition to the exemptions allowed under AS 09.38.015(a) and the
 7 exemption for liquid assets under AS 09.38.030, an individual is entitled to an
 8 exemption of cash and other liquid assets up to \$8,075. In this subsection, "liquid
 9 assets" includes deposits, securities, notes, drafts, accrued vacation pay, refunds,
 10 prepayments, and receivables, but does not include property identified under (a) of this
 11 section.

12 * **Sec. 7.** AS 09.38.025(a) is repealed and reenacted to read:

13 (a) Except as provided in this section or AS 09.38.017, an individual is entitled
 14 to an exemption of \$250,000 in the total combined value of the cash surrender value
 15 of all life insurance policies and annuity contracts owned by the individual, unless the
 16 life insurance policies or annuity contracts were entered into for the benefit of a
 17 creditor.

18 * **Sec. 8.** AS 09.38.025 is amended by adding new subsections to read:

19 (c) A beneficiary of a life insurance policy or annuity contract is entitled to
 20 an unlimited exemption of all proceeds of life insurance policies and annuity contracts
 21 that are payable on the death of an insured to the beneficiary, other than those
 22 proceeds that are paid to the insured's estate.

23 (d) If the life insurance policies and annuity contracts of an individual have
 24 accrued dividends and loan values available to the individual that aggregate more than
 25 \$250,000, a creditor of the individual may obtain a court order that requires the
 26 individual or the beneficiary of the policy to pay the creditor and that authorizes the
 27 creditor on the debtor's behalf to obtain payment of the amount of the accrued
 28 dividends and loan values that exceed \$250,000 or the amount of the creditor's claim,
 29 whichever amount is less.

30 * **Sec. 9.** AS 09.38.055 is amended to read:

31 **Sec. 09.38.055. Bankruptcy proceedings.** In a proceeding under 11 U.S.C.

1 (Bankruptcy) only the exemptions under AS 09.38.010, 09.38.015(a) and (e),
2 09.38.017, 09.38.020, 09.38.025 and 09.38.030 apply.

3 * **Sec. 10.** AS 09.38.060(a) is amended to read:

4 (a) If property, or a part of it, that could have been claimed as [AN EXEMPT
5 HOMESTEAD UNDER AS 09.38.010,] a burial plot under AS 09.38.015(a)(1), a
6 health aid under AS 09.38.015(a)(2), or personal property subject to a value limitation
7 under AS 09.38.020(a)(1) [,] or (2) or (c) [09.38.020(c)], has been taken or sold by
8 condemnation, or has been lost, damaged, or destroyed and the owner has been
9 indemnified for it, the individual is entitled to an exemption of proceeds that are
10 traceable for 12 months after the proceeds are received. If property, or a part of it,
11 that could have been claimed as an exempt homestead under AS 09.38.010 has
12 been voluntarily sold, has been taken or sold by condemnation, or has been
13 damaged or destroyed and the owner indemnified for the damage or destruction.
14 the [AN] individual is entitled to an exemption of proceeds of the property, [FROM
15 THE VOLUNTARY SALE OF AN EXEMPT HOMESTEAD UNDER AS 09.38.010]
16 that are traceable for 24 [SIX] months after the proceeds are received. The exemption
17 of proceeds under this subsection does not entitle the individual to claim an aggregate
18 exemption in excess of the value limitation otherwise allowable under AS 09.38.010
19 or 09.38.020.

20 * **Sec. 11.** AS 09.38.115(a) is amended to read:

21 *Delete* (a) The dollar amounts in this chapter change, as provided in this section,
22 according to and to the extent of changes in the Consumer Price Index for all Urban
23 Consumers for the Anchorage Metropolitan Area compiled by the Bureau of Labor
24 Statistics, United States Department of Labor (the index). The ^{annual average of the index} ~~index for January of~~ ^{for}
25 1998 is the reference base index for the dollar amounts in AS 09.38.010(a),
26 09.38.020(f), and 09.38.025(a) and (d), and ^{average annual of the index for} ~~the index for January of~~ 1982 is the
27 reference base index for the other dollar amounts in this chapter.

28 * **Sec. 12.** AS 09.38.115(b) is amended to read:

29 *Delete* (b) The dollar amounts change on October 1 of each even-numbered year if
30 the percentage of change, calculated to the nearest whole percentage point, between
31 ^{average annual of the index for the year preceding that even-numbered} ~~the index for January of that~~ year and the most recent index used to change the

1 exemption amount, is ~~portion of the percentage change in the~~

2 (1) the ~~portion of the percentage change in the index in excess of a~~
 3 ~~multiple of 10 percent is disregarded and the~~ dollar amounts change only in multiples
 4 of ⁵⁰⁰~~10~~ percent of the amounts appearing in this chapter on the effective date of this
 5 Act for the dollar amounts in AS 09.38.010, 09.38.020(f), and 09.38.025(a) and (d)
 6 and on August 26, 1982, for the other dollar amounts in this chapter; and

7 (2) the dollar amounts do not change if the amounts required by this
 8 section are those currently in effect as a result of earlier application of this section.

9 * **Sec. 13.** AS 09.38 is amended by adding a new section to read:

10 **Sec. 09.38.130. Treatment of certain trusts.** A trust is treated as an
 11 individual when applying the provisions of this chapter if the trust is revocable by the
 12 person creating the trust or if the income of the trust is taxable to the individual
 13 creating the trust under the grantor trust rules of 26 U.S.C. 671 - 678.

14 * **Sec. 14.** AS 09.38.030(e)(4) is repealed.

15 * **Sec. 15.** The uncodified law of the State of Alaska is amended by adding a new section
 16 to read:

17 **TRANSITION.** Notwithstanding AS 09.38.115(b), as amended by sec. 12 of this Act,
 18 the dollar amounts in AS 09.38.010(a), 09.38.020(f), and 09.38.025(a) and (d), as amended
 19 in secs. 1 and 6 - 8 of this Act, do not change in 2000.

20 * **Sec. 16.** This Act takes effect immediately under AS 01.10.070(c).

EXEMPTION STATUTE

SPONSOR'S STATEMENT

This bill increases the dollar amount of specified assets which an Alaskan resident can retain free of creditor claims. It also provides protection for certain assets not previously covered by existing law. The protection which this bill affords Alaska residents is by no means as expansive as the laws of other states but is a vast improvement over our existing law. The justification for an exemption lies in a public policy decision that certain assets should be beyond the reach of creditor claims if a person is unable to repay the creditor. For instance the homestead exemption expresses a public policy decision that an individual is entitled to keep a certain amount of equity in a home free of a creditor claim that might have arisen from a rogue jury verdict or a catastrophic medical illness. At the same time it should be noted an exemption statute has no effect on a lender who secures the debt because the debt will always be repaid to the extent of the collateral securing the loan.

This bill changes the dollar amounts of our existing exemption statute with respect to the homestead exemption and life insurance. The homestead exemption is increased from the present amount of \$63,000 to \$250,000 per individual. This dollar amount tracks the same dollar amount which is exempt from federal income tax on the sale of a residence. At the present time 13 states give its citizens greater homestead protection than that given to Alaskan residents. Of these 13 states, Florida, Iowa, Kansas, Oklahoma and Texas give its citizens an unlimited homestead exemption. This bill also increases the exemption for the cash value of all life insurance policies and/or annuity contracts owned by an individual to \$250,000 and provides an unlimited exemption for the proceeds on a life insurance contract or annuity paid to a beneficiary. This furthers the public policy goal of providing financial protection for the insured's beneficiaries in the event of death, as well as providing an additional means of saving for retirement.

Several new exemptions are provided for in this bill. The first of these pertains to reserves established by condominium associations. At the present time these are not protected. If a creditor of an association were to receive a judgment in excess of the insurance coverage maintained by the association and the reserves were taken by the creditor, there would be no money left to pay the common bills or provide for the repair of common structures. This could result in a dislocation of the residents and a potentially huge problem for the public. Residents of condominium associations should have the security of knowing their dues will be used for the purposes intended. Secondly, this bill adds deferred compensation plans established for government employees as a protected retirement asset. Current law is grossly unfair to governmental employees because deferred compensation plans, which are akin to the 401(k) plans found in private enterprise, do not have any protection under current law. This section would put governmental 457 plans on an equal footing with other retirement plans. Thirdly, there is a new exemption which allows an individual to retain a minimal amount of cash which might be necessary to pay for the following month's rent and living expenses. This dollar amount follows the exemption now found for cash under federal bankruptcy law.

EXEMPTION STATUTE

SECTIONAL ANALYSIS

Sections 1 and 2. Proposed change with respect to the homestead exemption under AS 09.38.010.

It is said a person's home is his/her castle. States have acknowledged this fact by passing exemption statutes which are meant to protect an individual's home from creditor claims. An exemption statute is typically meant to provide the homeowner protection against creditors which might arise from a rogue jury verdict or a catastrophic medical illness. The exemption statute has no effect on a lender which lends money secured by a deed of trust on the home. To the extent the debt is in default the lender will continue to be able to foreclose on the deed of trust and take back the home in satisfaction of its loan.

15 states give its citizens greater homestead protection than that given to Alaskan residents. Of these 15 states, Florida, Iowa, Kansas, Oklahoma, Texas and South Dakota grant its citizens an unlimited homestead exemption.

The homestead exemption for the state of Alaska was last amended in 1988 and although a cost of living increase is in effect the present exemption is still only \$63,000.

The proposed change intends to track the change made in federal income tax law by the Taxpayer Relief Act of 1997 for the sale of a principal residence. This Act provides relief to individuals from the confiscatory effect of income tax on the sale of a principal residence by providing an exclusion of up to \$250,000 (\$500,000 in the case of married taxpayers filing a joint return) of gain realized on a sale or exchange. In addition this gain can be excluded once every two years. In the same manner as Congress and the President have seen fit to protect principal residences from taxation, this bill proposes to protect principal residences owned by Alaskan residents, by increasing the exemption from the present amount to a new amount of \$250,000 per individual.

Section 3. Clarification of sales procedures relating to homestead exemption.

Our current statute has a glitch which does much to undermine our present homestead exemption. Under current law a creditor can force the sale of the homestead for an amount less than the exemption. Unless the debtor has the funds to repurchase the homestead, then the creditor could be the high bidder at the execution sale and get the homestead for an amount that is less than the exemption. This possibility is eliminated under this proposed section. This section provides that the court shall enter an order confirming the execution sale unless "the sale price under the execution is less than the amount of exemption." Therefore, under the proposed bill a court could not confirm the sale of a homestead if the highest bid at sale was less than the homestead exemption.

Sections 4 and 9. Protection for deposits held in name of condominium associations.

The additional protection for condominium associations and like associations is meant to protect against the circumstance of a condominium association being sued and having its deposits attached, leaving its owners with insufficient resources to maintain its structures. All condominium associations charge the individual owners monthly dues and special assessments which are then used to provide for the continued maintenance of common areas. Most condominium associations plan for projects in advance, (for instance the repair of a roof), by reserving sufficient amounts in their budgets to pay for these projects. These projects promote the general good. Without this protection the forfeiture of an association's deposits and its subsequent inability to pay utility bills and bills needed to maintain the structural integrity of the premises could result in the dislocation of its occupants or at the very least subject its occupants to an increased likelihood that structural integrity of the premises will not be maintained because of lack of funds to pay for maintenance. Moreover, this exemption would not inure to the benefit of any one individual but only to the common good because no one owner who pays monthly dues to a condominium association ever expects to receive anything back other than the continued structural integrity and safety of the premises, which are being paid for by these dues.

Section 5. Protection of governmental deferred compensation plans.

This section adds medical savings accounts and deferred compensation plans established for government employees as retirement accounts protected under current law. The provision for medical savings accounts will have limited application as they are fairly rare. However current law is grossly unfair to governmental employees because deferred compensation plans which are akin to the 401(k) plans found in private enterprise, do not share the same protection under the law. This section would change that and put 459 plans on an equal footing with other retirement plans.

Section 6. Limited cash exemption.

Presently there is no provision under Alaska law for the protection of a minimal amount of cash which might be necessary to pay for the following month's rent and living expenses. This section follows the exemption now found for cash under the federal bankruptcy law exemptions and provides that at least a minimal amount of cash can be protected for the payment of necessities.

Sections 7 and 8. Proposed change for exemption of life insurance and annuity contracts under AS 09.38.025.

The present exemption for life insurance policies (\$10,000) is unrealistically low and fails to take into account the possibility that an individual's may no longer be insurable since the date an original policy was purchased. As a result, the only insurance protection which an insured might have is through the continuance of an existing whole life policy, which also results in a continual build-up of the cash surrender value of that policy. By the same token, annuity contracts provide protection for an individual's retirement as well as protecting the beneficiaries to whom an annuity might be ultimately be paid at death. Almost every state in the country provides

unlimited protection for either the owner of an insurance policy or the beneficiaries. In many states, unlimited protection is provided for both the owner and the beneficiaries. It is commonly recognized that insurance is necessary to prevent dependent family members from becoming public charges should an untimely death occur and in this respect both the cash value of said policies and the proceeds of said policy are protected to the extent indicated.

This section increases the exemption for the cash value of all life insurance policies and/or annuity contracts owned by an individual to \$250,000 and provides an unlimited exemption for the proceeds on a life insurance contract or annuity paid to a beneficiary.

Section 10. Tracing of assets permitted for limited time period.

This section changes AS 09.38.060 by increasing the tracing period with respect to an exempt homestead from the present 12 month/6 month period to 2 years, as is now provided in federal tax law.

Sections 11 and 12. Indexing of dollar amounts for inflation.

This section continues prior law by providing the dollar amounts will continue to change in accordance with the Consumer Price Index.

Section 13. Definition of individual to include certain trusts created by the individual.

The section takes into account the growing popularity of a revocable living trust as a will substitute, and recognizes the fact that the same exemptions afforded an individual when an asset is held individually in that person's name should also be extended should an asset be held in the name of that person's revocable trust. This section extends similar treatment to an irrevocable trust created by a grantor if the grantor is treated as the owner of the trust for federal income tax purposes under the grantor trust rules of the Internal Revenue Code.

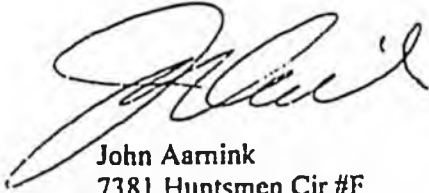
February 25, 2000

Representative Norman Rokeberg
House of Representatives
State Capital
Juneau, Alaska 99801-1182

Dear Representative Rokeberg,

I am President of the "Foxwood 83" homeowners Association in Anchorage. I represent 184 homeowners. Please enter our support for House Bill 369, Sponsored by Rep. John Harris, specifically Sec. 4.

Thank you,



John Aamink
7381 Huntsmen Cir #F
Anchorage, Alaska 99518

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FEB 25 2000

FAX - MEMO
NUMBER OF ADDITIONAL PAGES - *2*

TO: Rep Niam Rodehorst
FROM: JIM THIELE, CFP
Financial Network
4041 B Street, Ste 209
Anchorage, AK 99507
(907) 562-2658
FAX (907) 562-7698
E mail address: JTHIELE@MICRONET.NET



RE: HB 369

Just Had a chance to review the
proposed changes to the exemption statute -
Please record my support for this bill -
it should greatly benefit the
majority of my clients.

Chamberlain

RECEIVED
FEB 28 2000

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FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

BILL NO. HB 369

Revision Date/Time (Note if correction) _____	Dept. Affected _____	Law _____
Title <u>"An Act relating to property exemptions under the Alaska Exemptions Act; and providing for an effective date."</u>	BRU	Civil Division
Sponsor <u>Representative Harris</u>	Component <u>Collections & Support</u>	Commercial
Requester <u>House Labor and Commerce Committee</u>	Component No. <u>2210;2211</u>	

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2000) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

HB 369 increases the homestead property exemption, whether in bankruptcy or affected by executions, from \$54,000 to \$250,000. In addition, current law limits the exemption applied to property held in joint ownership, and used as principal residence by at least one of the owners or their dependents, to \$54,000 in total. This bill will entitle each owner to the \$250,000 exemption. In addition to existing exemptions for certain personal property, an individual exemption of \$8,075 for cash and defined liquid assets would be permitted under this bill.

The Department of Law does not anticipate this bill will have a fiscal impact on its collection of debts owed the state, because the debts are either excepted from this statute, or secured.

Prepared by: <u>Joan M. Kasson</u> <i>Joan M. Kasson</i>	Phone <u>465-5370</u>
Division <u>Attorney General's Office</u>	Date/Time <u>2/25/00, 1:37 PM</u>
Approved by <u>Commissioner</u> <i>[Signature]</i> <u>Bruce M. Botelho, Attorney General</u>	Date <u>2/25/00</u>
Agency <u>Department of Law</u>	

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